

EDMUND G. BROWN JR., Attorney General
of the State of California
FRANK H. PACOE
Supervising Deputy Attorney General
LESLIE E. BRAST, State Bar No. 203296
Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5548
Facsimile: (415) 703-5480

Attorneys for Complainant

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. *2008-358*

ROSARIO QUINA OANIA
595 Blom Drive
San Jose, CA 95111

A C C U S A T I O N

Registered Nurse License No. 229339

Respondent.

Complainant alleges:

PARTIES

1. Ruth Ann Terry, M.P.H., R.N. (Complainant), brings this Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing (Board), Department of Consumer Affairs.
2. On or about January 1, 1972, the Board issued Registered Nurse License Number 229339 to Rosario Quina Oania (Respondent). The license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2009, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

1 4. Code section 2750 provides, in pertinent part, that the Board may
2 discipline any licensee, including a licensee holding a temporary or an inactive license, for any
3 reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4 5. Code section 2764 provides, in pertinent part, that the expiration of a
5 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
6 against the licensee or to render a decision imposing discipline on the license.

7 6. Code section 2761 states:

8 “The board may take disciplinary action against a certified or licensed nurse or
9 deny an application for a certificate or license for any of the following:

10 (a) Unprofessional conduct, which includes, but is not limited to, the following:

11 (1) Incompetence, or gross negligence in carrying out usual certified or licensed
12 nursing functions. . .”

13 7. Code section 2725, subdivision (b), states, in pertinent part:

14 “The practice of nursing within the meaning of this chapter [the Nursing Practice
15 Act] means those functions, including basic health care, that help people cope with difficulties in
16 daily living that are associated with their actual or potential health or illness problems or the
17 treatment thereof, and that require a substantial amount of scientific knowledge or technical skill,
18 including all of the following:

19 . . .

20 (4) Observation of signs and symptoms of illness, reactions to treatment, general
21 behavior, or general physical condition, and (A) determination of whether the signs, symptoms,
22 reactions, behavior, or general appearance exhibit abnormal characteristics, and (B)
23 implementation, based on observed abnormalities, of appropriate reporting, or referral, or
24 standardized procedures, or changes in treatment regimen in accordance with standardized
25 procedures, or the initiation of emergency procedures.”

26 8. California Code of Regulations, title 16, section 1442, provides that “gross
27 negligence,” as used in Code section 2761, “includes an extreme departure from the standard of
28 care which, under similar circumstances, would have ordinarily been exercised by a competent

1 registered nurse. Such an extreme departure means the repeated failure to provide nursing care as
2 required or failure to provide care or to exercise ordinary precaution in a single situation which
3 the nurse knew, or should have known, could have jeopardized the client's health or life."

4 9. California Code of Regulations, title 16, section 1443, provides that
5 "incompetence," as used in Code section 2761, "means the lack of possession of or the failure to
6 exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by
7 a competent registered nurse as described in Section 1443.5."

8 10. California Code of Regulations, title 16, section 1443.5 states:

9 "A registered nurse shall be considered to be competent when he/she consistently
10 demonstrates the ability to transfer scientific knowledge from social, biological and physical
11 sciences in applying the nursing process, as follows:

12 (1) Formulates a nursing diagnosis through observation of the client's physical
13 condition and behavior, and through interpretation of information obtained from the client and
14 others, including the health team.

15 (2) Formulates a care plan, in collaboration with the client, which ensures that
16 direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and
17 protection, and for disease prevention and restorative measures.

18 (3) Performs skills essential to the kind of nursing action to be taken, explains the
19 health treatment to the client and family and teaches the client and family how to care for the
20 client's health needs.

21 (4) Delegates tasks to subordinates based on the legal scopes of practice of the
22 subordinates and on the preparation and capability needed in the tasks to be delegated, and
23 effectively supervises nursing care being given by subordinates.

24 (5) Evaluates the effectiveness of the care plan through observation of the client's
25 physical condition and behavior, signs and symptoms of illness, and reactions to treatment and
26 through communication with the client and health team members, and modifies the plan as
27 needed.

28 ///

1 (6) Acts as the client's advocate, as circumstances require, by initiating action to
2 improve health care or to change decisions or activities which are against the interests or wishes
3 of the client, and by giving the client the opportunity to make informed decisions about health
4 care before it is provided."

5 11. Section 125.3 of the Code provides, in pertinent part, that the Board may
6 request the administrative law judge to direct a licensee found to have committed a violation or
7 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
8 and enforcement of the case.

9 FACTUAL BACKGROUND

10 12. On or about July 11, 1998, while working as an intensive care nurse at
11 Kaiser's Santa Theresa Medical Center in San Jose, Respondent mistakenly placed a nasogastric
12 feeding tube, intended for the digestive tract, through the trachea and into the left lung cavity of a
13 59-year-old post-surgical patient.¹ The patient died the following day; the Santa Clara County
14 Medical Examiner attributed her death to atelectasis² and pneumonia, due to the presence of
15 800cc of creamy food material in the left pleural cavity.

16 FIRST CAUSE FOR DISCIPLINE

17 (Gross Negligence and/or Incompetence)

18 13. Respondent is subject to disciplinary action for gross negligence and/or
19 incompetence pursuant to section 2761, subdivision (a)(1), in that she failed to properly assess
20 her placement of a nasogastric feeding tube in a post-surgical patient, as described in paragraph
21 13, above.

22 ///

23 ///

24 _____
25 1. The patient, who had Graves' disease (hyperthyroidism), had undergone a subtotal
26 thyroidectomy on July 7, 1998. She suffered post-operative respiratory distress and vocal chord
paralysis requiring a tracheotomy and nasogastric tube feeding.

27 2. Atelectasis is the collapse of part or all of a lung. It is caused by a blockage of the air
28 passages (bronchus or bronchioles) or by pressure on the lung.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3
4
5
6

7

8
9

10

11

12
13
14

15

17

19
20
21
22